



**Local Government Advisory Committee
Comments to EPA on
The Chesapeake Bay Draft TMDL**

November 8, 2010

Introduction

The Local Government Advisory Committee (LGAC) to the Chesapeake Executive Council is pleased to submit its comments and recommendations on the Environmental Protection Agency's (EPA) Chesapeake Bay Draft TMDL. Local governments will be directly impacted by the Bay TMDL, and have consistently been told by EPA and state partners that they will play a major role in how it is implemented. Therefore, it is imperative that EPA and the states respond to the concerns of local governments throughout the Bay Watershed.

As explained by EPA, the Draft TMDL is essentially a hybrid document consisting of individual state and the District of Columbia's (DC) Watershed Implementation Plans (WIPs) and EPA "backstop" requirements where those plans have failed to meet the load allocations required by EPA. It is anticipated that the state and DC WIPs will be brought into compliance with EPA load allocations when they are revised and submitted by November 29th.

EPA's evaluation of the District's and individual state's WIPs are instructive because they are described as the cornerstone of the accountability framework for meeting the Bay TMDL. EPA has concluded that while Maryland and the District of Columbia have some deficiencies, all the other states, Virginia and Pennsylvania, and the headwater states of Delaware, New York, and West Virginia, have serious deficiencies. Their evaluation also concluded that none of the seven WIPs provide "reasonable assurance" that pollution controls identified could actually be implemented to achieve the nitrogen, phosphorus, and sediment reduction targets by 2017 or 2025. In public meetings in October and November throughout the Watershed, EPA has also expressed an expectation that these deficiencies and more detailed information provided by the states in the revised WIPs will lead to a final TMDL with few if any EPA "backstop" measures.

LGAC Comments:

With that as a backdrop, LGAC submits the following comments on the Draft Chesapeake Bay TMDL:

- EPA and the Chesapeake Bay Program have continually recognized the importance of local governments as vital partners in implementing measures that will restore and protect the Chesapeake Bay. LGAC directly advises the Chesapeake Executive Council and participates in the Management Board and the Principal's Staff Committee meetings and other Bay Program activities with partner states and the District of Columbia. Yet there is no direct recognition of local governments in the Draft TMDL, or in the guidance EPA gave to the states for their Watershed Implementation Plans.

Consultation with local governments prior to making TMDL related decisions is absolutely necessary. Some states have created single, broad based stakeholder advisory groups with a few local government officials as members. And they point to those groups as the primary source of input from local governments. Our experience is that process is wholly inadequate. There is little evidence that the majority of states have included the concerns of their local governments in their Watershed Implementation Plans.

We would like to commend the State of Maryland for reaching out to local governments in the preparation of their WIP. In fact, their ongoing pilot projects in Caroline and Anne Arundel Counties, could serve as a model for state consultation with local governments. All of this becomes much more critical for the Phase 2 WIPs due in 2011. If TMDL loadings are allocated down to a county or sub-jurisdictional level, consultation with local governments before those decisions are made should be mandatory for all states.

In the Virginia pilot projects, there are local and regional governmental units, including cities, counties, towns, planning districts, and soil and water districts. In the pilots, each has distinct experiences, authority, and funding which can make the project stronger if all are involved. The use of more existing, local forums to bring stakeholders together can result in more creative and useful local and or regional solutions. EPA should incorporate the lessons learned in the various state WIP pilot projects into its requirements for local government involvement in the Phase 2 WIPs.

LGAC recommends that EPA issue specific guidance to the states to require meaningful consultation with local governments in the Phase 2 WIPs. Further, EPA should request that all states develop a plan and criteria for local government involvement that would be a part of the WIP approval process. To the extent possible, EPA should spell out its expectations now for local government involvement in the final TMDL issued in December of 2010.

- LGAC is most directly concerned with the impact of the Bay TMDL on wastewater treatment plants and, where it applies, on MS4 permits. More stringent regulations and expensive retrofits for stormwater facilities to meet TMDL requirements will have an enormous impact on the ability of local governments to pay for them. In Pennsylvania, for example, the state is reported to be facing a five billion dollar deficit which has already caused environmental programs and staff to be drastically reduced.

Local governments throughout the Watershed are facing the same kind of hard budgetary choices caused by the current economic downturn. It is simply not realistic to expect that while local governments reduce services to their constituents, they then ask them to pay increased fees and taxes to pay for expensive retrofits. The political costs at the local level are real and could lead to a backlash against local officials who do support efforts to restore and protect the Chesapeake Bay.

That is why it is absolutely necessary for EPA and the states to address the issues of funding projects at the same time they are communicating the requirements of the Bay TMDL. LGAC has supported local government actions needed to clean up the Bay, but has always told the Chesapeake Executive Council that increased federal and state funding to local governments is crucial to meeting the clean up and restoration goals of the Bay Program. While there have been impressive requests to Congress for additional funding through EPA and the Farm Bill, those increases have not yet been fully approved. LGAC has and will continue to support increased federal and state funding that will be necessary to implement the TMDL.

- In the recent round of public meetings on the Bay TMDL, local government officials have stressed that, while funding for restoration projects is critical, it is no more important than building broad general public support for the initiatives required by the TMDL. There are two broad areas where EPA needs to step up into a stronger leadership role.

The first requirement is to establish the creditability of its modeling programs upon which the TMDL is based. This means that the methodology by which the coming local level allocations are made must be scientifically sound and legally defensible. Local government officials are acutely aware of these principals when they make budgetary decisions on any local plans, programs, or projects. The scientific and legal basis for the TMDL must be strong and persuasively presented so taxpayers and constituents can understand why it is necessary to make the investments that will protect their water quality at the local level. LGAC strongly recommends that local water quality data be incorporated into the requirements for the Phase 2 WIPs and that monitoring protocols be established and funded to assess progress of reductions in pollutant loads at each sub-watershed.

Secondly, EPA must take a stronger role in developing messages that local governments can use in explaining the need for TMDL compliance at the local level. Earlier this year in a letter to EPA Administrator, Lisa Jackson, in support of Senator Cardin's bill to reauthorize the Bay Program, LGAC requested that there be a strong communications and educational effort to explain to all citizens why and how this effort is critical to cleaning up the Chesapeake Bay. For those local officials facing their constituents, this is a vital component to communicating the message of Bay cleanup and restoration. LGAC will work with EPA to take a proactive role in helping to develop messages and educational efforts that will resonate at local government levels throughout the Watershed. We also recommend that the lessons learned from all the Pilot Projects be collected and made a part of whatever communication and outreach tools that are developed.

Some of our long standing LGAC members also wish to point out that the Chesapeake Bay Watershed Blue Ribbon Finance Panel called for a strong education and outreach component in their original report in 2004. This is one very important aspect of cleaning up and restoring the Chesapeake Bay, true then and true today, that neither EPA nor any of the Bay Partners can afford to ignore. We will succeed only if there is a full understanding of the stakes involved in our efforts.

- In the Draft TMDL and backstop measures, EPA has gone out of its way to point out that the requirements are narrowly focused on clear cut authorities contained in the Clean Water Act. In most cases, those measures are aimed directly at point sources of pollution, and, except in the case of CAFO's, away from non-point sources connected with agricultural lands. EPA expects that states will be more responsible for controlling non-point sources in their own jurisdictions. Our concern is that the total burden of reducing nitrogen, phosphorous, and sediment may fall disproportionately on point sources for which many local governments have prime responsibility. Across the Watershed, states have varying authorities and willingness to enforce reduction measures on agricultural lands. Local governments are more than willing to do their part to meet reduction allocations as long as controls and measures are spread across all sectors equitably.

Conclusion

LGAC recognizes that the Draft TMDL will be revised and issued again before the end of the year, and that, next year, there will be further refinement of allocations down to a finer scale, quite possibly on a local government jurisdiction level. The TMDL will be a dynamic force to which the principals of adaptive management must apply. But, unless the issues we have raised are not addressed, there will be little chance of the kind of success that will be needed to restore and protect this incredible resource we call the Chesapeake Bay.

As elected and appointed local government officials, our job is to get elected, then beyond that, to govern. We are judged on our ability to provide services, manage our budgets, and provide leadership on a dizzying array of complex issues. Our collective experience over the years has shown us that, in order to be successful, we must find the right balance in a vast community of competing interests. Time and again, elected officials have been catalysts in finding common ground on which to govern. The challenge we have before us is to be aware of the essential economic well being of our communities as well as the need to provide a clean, healthy environment that will nurture those communities. Our choices are rarely either/or, rather they are of finding the right balance. As we go forward with the TMDL, we encourage all our partners to keep our goals in sight and to use common sense and balance in the decisions we need to preserve and protect our treasured national resource, the Chesapeake Bay.

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